

UNITED STATES TAX COURT
WASHINGTON, DC 20217

Thomas M. Comparini & Vicki Comparini,)
)
Petitioners,)
)
v.) Docket No. 18872-13W.
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent)

ORDER AND DECISION

This whistleblower case is before the Court on respondent's motion for summary judgment, filed August 7, 2015. On September 14, 2015, petitioners filed a notice of objection to respondent's motion.

Summary judgment serves to “expedite litigation and avoid unnecessary and expensive trials.” Fla. Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy, but we may grant summary judgment only if there is no genuine dispute as to any material fact. Rule 121(a); Naftel v. Commissioner, 85 T.C. 527, 529 (1985).¹ We conclude that there is no dispute as to a material fact, and this case is ripe for summary adjudication.

I. Background

In September 2012, Mr. Comparini saw a full-page advertisement in a newspaper announcing a cash offer for information about tax returns of a third party. On or about October 15, 2012, petitioners submitted a Form 211, Application for Award for Original Information, to respondent. In the Form 211, petitioner identified the individual and the corporation who placed the

¹Rule references are to the Tax Court Rules of Practice and Procedure, and section references are to the Internal Revenue Code of 1986 (Code), as amended, for the relevant year.

advertisements and alleged that they violated several provisions of the Code by “offer[ing] to illegally purchase taxpayer information”. Petitioners’ submission was based on the premise that the advertisements and the potential cash payments for information about tax returns of the third party constituted solicitation and potential unauthorized disclosure of return information, punishable by fines under various statutes, including sections 7213(a)(1), 7213(a)(3), 7214, 18 U.S.C. section 371, and 18 U.S.C. section 372.

Petitioners’ claims were assigned claim numbers 2013-001690, 2013-00692, 2013-001748, and 2013-001749. An entry dated January 22, 2013, in the e-Trak system, which is the Whistleblower Office’s computer database, see Kasper v. Commissioner, 137 T.C. 37, 39-40 (2011), indicates the following comments: “Unable to ID. Unclear tax allegation. Information is already known by the Internal Revenue Service.” On January 25, 2013, respondent denied petitioners’ claims. On June 18, 2013, petitioners sent respondent a letter. Respondent subsequently sent petitioners determinations dated July 16, 2013, stating that “[w]e considered the additional information you provided and determined your claim still does not meet our criteria for an award. Our determination remains the same . . .”. Petitioners filed a petition to commence this case in response to the July 16, 2013 determination.

II. Respondent’s Motion for Summary Judgment

In his motion for summary judgment, respondent states that he did not commence a judicial or administrative action on the basis of petitioners’ information and did not collect any proceeds. A whistleblower award under section 7623 generally is dependent on two prerequisites: (1) the Commissioner commencing an administrative or judicial action; and (2) the collection of tax proceeds. Cohen v. Commissioner, 139 T.C. 299, 302 (2012), aff’d 550 Fed. Appx. 10 (D.C. Cir. 2014); Cooper v. Commissioner, 136 T.C. 597, 600 (2011). We have held that we may not order the Commissioner to commence a whistleblower investigation. See Cooper v. Commissioner, 136 T.C. at 600-601. If the Commissioner does not commence an administrative or judicial action, there can be no whistleblower award. See id. at 601.

In their response to the pending motion for summary judgment, petitioners contend that respondent’s motion is not supported by any documents. Although petitioners agree that the Tax Court cannot order the Commissioner to commence an administrative or judicial action, petitioners contend that respondent attempts to deny petitioners’ Tax Court appeal rights and that the Tax Court should sanction

respondent for constitutional violations and denial of petitioners' rights. Petitioners also disagree with our holding in Cooper v. Commissioner, 136 T.C. 597. None of petitioners' objections, however, are relevant to whether respondent has initiated an administrative or judicial action or collected tax proceeds.

As discussed above, commencing an administrative or judicial action is a prerequisite for a whistleblower award. Our jurisdiction in section 7623 actions does not contemplate that we redetermine the tax liability of the target, or determine that the target should be punished by a fine. See id. at 600. Contrary to petitioner's arguments, respondent relies on the classifier's entry dated January 22, 2013, showing that the Whistleblower Office did not commence an investigation. Respondent did not collect any proceeds, and petitioners' notice of objection does not dispute that fact. There is no genuine issue as to any material fact, and we will grant respondent's motion for summary judgment.

To reflect the foregoing, it is

ORDERED that respondent's Motion for Summary Judgment, filed August 7, 2015, is granted. It is further

ORDERED and DECIDED that respondent's determination in the notice dated July 16, 2013, is sustained.

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(Signed) Peter J. Panuthos
Special Trial Judge

ENTERED: **FEB 18 2016**